IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1399 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SALUJI RAMSING

Versus

KANTIBHAI LALJIBHAI-DELETED

Appearance:
MR SANDIP C SHAH for appellant
DELETED for Respondents No. 1,3
MR BR SHAH for Respondent No. 2
MR AJAY R MEHTA for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.H.KADRI

Date of decision: / /2002

C.A.V. JUDGEMENT (Per : MR.JUSTICE M.H.KADRI)

The appellant-original claimant, in this appeal which is filed under Section 110-D of the Motor Vehicles Act, 1939, has challenged the judgment and award dated

September 18, 1986, passed by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural) at Narol in Motor Accident Claim Case No.470 of 1984, by which judgment and award the Tribunal rejected the claim petition filed by the appellant for the injuries sustained by him in a vehicular accident which took place on February 2, 1984, due to rash and negligent driving of the driver of the Motor Truck bearing No.G.T.E. 7047.

2. The appellant was working as a labourer on the Motor Truck bearing No.G.T.E. 7047 belonging to the respondent No.2. On February 2, 1984, the truck which was loaded with bricks was proceeding from Chandlodiya to Nirnaynagar. When the truck reached near Nirnaynagar, the left plank of the truck suddenly got opened and some of the bricks had fallen down on the road. On the instructions of the driver of the truck, the appellant got down from the truck for closing the plank of the truck. While the appellant was fastening the left plank of the truck, the driver of the truck suddenly started the truck and due to jerk the appellant had fallen down on the road and his left leg came under the rear left wheel of the truck. The appellant was removed to V.S.Hospital where his leg came to be amputated. The appellant remained in the hospital for nearly one month and after the discharge from the hospital, the appellant lodged a complaint against the driver of the truck and criminal prosecution was filed against the driver of the truck which ultimately resulted into acquittal. As per the say of the appellant, he was working with the respondent No.2 as a labourer on truck bearing No. G.T.E. 7047 and was getting monthly salary of Rs.500/-. The appellant due to accidental injuries and permanent disability suffered by him, claimed compensation of Rs.1,50,000/- by filing claim petition before the Tribunal. In the said claim case the driver and owner of truck bearing No.GTE 7047 were impleaded as opponents, whereas respondent No.4-Insurance Co. was also impleaded as party-respondent with whom the truck in question was insured.

3. The Tribunal after recording oral as well as documentary evidence came to the conclusion that the appellant had failed to prove that he had sustained injuries in a vehicular accident. However, the Tribunal on the question of quantum of compensation came to the conclusion that the appellant is entitled to compensation of Rs.74,000/- for the injuries suffered by him which has resulted into permanent disability. However, the Tribunal dismissed the claim case as it was not proved by the appellant that he had sustained injuries in a

vehicular accident, which has given rise to filing of this appeal.

4. Learned counsel for the appellant and the respondents have taken us through the entire record and proceeding. We have carefully scanned through the record and proceeding of the Tribunal and have also heard learned counsel for the parties.

5. Learned counsel for the appellant has strenuously urged that the Tribunal had misread the evidence wherein the witnesses of the appellant and the appellant himself had deposed that he he had fallen down from the truck and had sustained injuries on his left leg which was crushed under the rear left wheel of the truck bearing No.G.T.E. 7047. In our opinion, the submission of the learned counsel for the appellant deserves to be accepted. In our view, the Tribunal had unnecessarily given more weight to the cross-examination of the witness Chhaganbhai Harjivan-Exh.20. The witness Chhaganbhai in the cross-examination had deposed that he had made a statement before the police that the appellant had sustained injuries due to fall from a tree. It be stated that no statement recorded by the police of the witness Chhaganbhai was produced before the Court nor the attention of the witness was drawn to such a statement. In absence of non-production of the said sa-called statement, the Tribunal had erred in relying on the cross-examination of the witness Chhaganbhai by drawing an inference that the appellant had sustained injuries due to fall from a tree. The witness Chhaganbhai had emphethetically deposed in his examination in chief that the appellant had sustained injuries due to fall from the truck and his left leg was crushed under the wheel of the truck. It is borne out from the record that after the appellant had sustained injuries, he was removed to the hospital by the truck driver and the witness Chhaganbhai Harjivan. The driver of the truck to save himself from criminal prosecution and to save the owner of the truck from the liability to pay compensation to the appellant must have informed the police that the appellant had fallen down from a tree. The Tribunal in our opinion, had totally misread the evidence of the appellant who had examined himself at Exh.13. The appellant had specifically deposed that he had sustained injuries in the vehicular accident due to rash and negligent driving of the driver of the truck while he was closing the left plank of the truck. The appellant himself had never made a statement before the police that he had sustained injuries as a result of a fall from a tree.

6. The Tribunal had totally ignored the oral testimony of auto-rickshaw driver-Manilal Rajaram Patel, who was examined by the appellant at Exh.23. The said rickshaw driver in no uncertain terms had deposed that he was waiting for a passenger near a lake which was located between Nirnaynagar and Chandlodiya. The said auto rickshaw driver had witnessed the entire accident. The appellant after sustaining the injuries was removed to V.S.Hospital in the auto rickshaw of the said witness and in the said auto rickshaw the driver and another labourer namely, witness Chhaganbhai had accompanied the appellant. The evidence of auto rickshaw driver Manilal Rajaram proves that the appellant had sustained injuries while he was working on the truck in question and he had fallen down while he was closing the left plank of the truck. The evidence of this witness as deposed in the examination-in-chief had gone unchallenged during the cross-examination. In our opinion, the Tribunal had totally ignored the evidence of the independent and disinterested witnesses i.e. auto rickshaw driver Manilal Rajaram Exh.23. It also requires to be stated that the truck driver was prosecuted in the Court of learned Metropolitan Magistrate but due to not-examination of witnesses, he came to be acquitted. In our view, by pressurizing the witness to make a false statement before the police, the driver and the owner of the truck in question had tried to dupe the appellant by making a show that he had sustained injuries as a result of a fall from a tree. In our view, the finding of the Tribunal that the appellant had failed to prove that he sustained injuries which resulted into permanent disability in a vehicular accident deserves to be quashed and set aside. In our view, the appellant had successfully proved that he has sustained injuries in a vehicular accident which took place on February 2, 1984, due to rash and negligent driving of the driver of the truck bearing No.GTE 7047. The respondent No.2 being the owner of the truck is vicariously liable for the tortious act of the driver of the truck. It is an admitted fact that the said truck was insured with the respondent No.4-New India Assurance Co. Ltd. under the policy of insurance which was valid and subsisting on the date of the accident.

7. Though the claim petition filed by the appellant was dismissed, the Tribunal had assessed the quantum of compensation awardable to the appellant as under.

Rs.45,000/- Future loss of income.
Rs.20,000/- Pain,shock and suffering
Rs. 6,000/- Actual loss of income.

Rs. 3,000/- Cost of medicines and medical treatment.

Rs.74,000/-

The learned counsel for the appellant has submitted that the quantum of compensation assessed by the Tribunal was inadequate and it should be enhanced under different heads and the appellant should be awarded compensation of Rs.1,50,000/- as claimed in the claim petition. We have considered the claim of the appellant on different heads, but in our opinion, looking to the injuries, the treatment undergone by the appellant and the permanent disablement suffered by him, the compensation assessed by the Tribunal is just and adequate. We, therefore, do not find any justifiable reason to interfere with the assessment of compensation made by the Tribunal. Therefore, the appellant is not entitled to any enhanced compensation higher than the quantum assessed by the Tribunal. In our opinion, the Tribunal had assessed just and reasonable compensation in favour of the appellant.

8. As a result of the foregoing discussion, this appeal is partly allowed. The judgment and award of the Tribunal dismissing the claim petition filed by the appellant is quashed and set aside. The claim petition filed by the appellant is allowed. The appellant shall be entitled to receive compensation of Rs.74,000/- from the respondents jointly and severally along with costs and interest at the rate of 6 % per annum from the date of filing of the petition till realisation. There shall be no orders as to costs. Decree be drawn accordingly.

(Y.B.Bhatt, J.) (M.H.Kadri,J.)

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